

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

OSCAR L. JOHNNY, JR.,

Plaintiff,

v.

LARRY BORNOWSKI and
STAMPEDE CARRIERS, LLC,
et al.,

Defendants.

Case No. 2:10-cv-04008-FJG

AFFIDAVIT OF PATRICK D. CAFFEY, PH.D.

COMES NOW Patrick D. Caffrey, Ph.D. and having been duly sworn and upon his oath states as follows:

1. My name is Patrick D. Caffrey. I have been retained as an expert witness on behalf of Defendants Larry Bornowski and Stampede Carriers, LLC in the above-captioned matter. A complete statement of all the opinions and testimony that I will express on behalf of Defendants and the basis and reasons for these opinions are contained in my written report, which is marked as Exhibit A and attached hereto.

2. A complete accounting of the data, documents and/or other information that I have reviewed and considered in forming my opinions is set forth in my written report, which is marked as Exhibit A and attached hereto.

3. Any exhibits that will be used to summarize or support my opinions, to the extent they exist, are referenced, described, contained in and/or attached to my written report marked as Exhibit A and attached hereto.

EXHIBIT

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4. My area of expertise is derived from my knowledge and experience as a rehabilitation psychologist and neuropsychologist. My qualifications to give an opinion and a list of all publications that I have authored in the previous ten (10) years are contained within my curriculum vitae, which is marked as Exhibit B and attached hereto.

5. A list of all other cases during the previous four (4) years in which I have testified as an expert at trial or by deposition is marked as Exhibit C and attached hereto.

6. A statement of the fee schedule and compensation to be paid for my study and testimony in this case is set forth in Exhibit D and attached hereto.

FURTHER AFFIANT SAYETH NOT.


Patrick D. Caffrey, Ph.D.

STATE OF Missouri)
)ss
COUNTY OF Jackson)

Subscribed and sworn to before me, a Notary Public, this 19 day of July, 2011.


Notary Public

My Commission Expires: 3/23/2015

RANIA L. TURNER
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
COMMISSIONED FOR JACKSON COUNTY
MY COMMISSION EXPIRES: 3-23-2015
COMMISSION NUMBER: 11390370



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Specializing in Counseling for the Disabled

**Patrick Caffrey, Ph.D.
Licensed Psychologist
Neuropsychology
Vocational Specialist**

July 18, 2011

**Michael Matteuzzi, Attorney at Law
Waldeck, Matteuzzi, & Sloan, PC
112th & State Line
1181 Overbrook Road, Suite 200
Leawood, KS 66211**

**RE: Johnny, Oscar L. Jr.
Date of Injury: 1-26-2008
Claim: 5012-32333**

RECORDS REVIEW

Dear Mr. Matteuzzi:

Per this report, please allow me to provide my opinions related to the review of the following records:

1. Deposition transcript Johnny, Oscar L. Jr., March 21, 2011
2. David K. Ebelke, M.D. IME dated March 29, 2011
3. David K. Ebelke, M.D. Additional Medical Records/x-ray review dated May 17, 2011 (Supplement)
4. Affidavit David K. Ebelke, M.D. Board Certified, Orthopedic Surgery
5. Affidavit Andrew S. Pavlovich, M.D. Board Certified, Ears, Nose and Throat Specialist
6. Paul E. Deutsch, Ph.D. Rehabilitation Evaluation dated March 1, 2011 and raw data.

As you know, this case involves Oscar L. Johnny, Jr. He is a 26-year old Vincentian (native to St. Vincent, an island in the southern Caribbean). He is married with a U.S. resident card, but his wife and child reside in Canada. He reportedly was injured on January 26, 2008 in the course of his employment with Covenant Transport, while operating an eighteen wheeler.

Dr. Paul E. Deutsch, Ph.D. in his Rehabilitation Report dated March 1, 2011 administered the following tests:

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1. MMPI-2-RF
2. Beck Anxiety Inventory
3. Beck Depression Inventory-II
4. Beck Hopelessness Scale
5. Beck Scale for Suicide Ideation

The results of the MMPI-2-RF indicated a type of response bias known as under reporting. Under reporting is indicated by the test taker not being honest and presenting himself in an extremely positive light by denying many minor faults and shortcomings that most people acknowledge. This level of virtuous self-presentation is very uncommon, even in individuals with a background stressing traditional values. The objective findings on the MMPI-2-RF, therefore, were inconsistent with the subjective complaints presented in an interview (history-taking) when one examines Dr. Deutsch's report. The MMPI-2-RF is commonly used to support hunches generated by clinical history and medical records. It is more likely than not that Mr. Johnny was over-compensating on the MMPI-2-RF for other times when his credibility had been called into question.

Indeed, he relies heavily on the "I don't remember" response in his deposition transcript, refused to respond to Dr. Ebelke's history taking questions and presented subjective complaints to Dr. Deutsch that were not supported by the MMPI-2-RF results. The results of Dr. Paul E. Deutsch's Rehabilitation Evaluation is based almost entirely on the injured worker's subjective complaints, many of which were not objectively demonstrated on the MMPI-2-RF or in Dr. Ebelke's examination.

In fact, Dr. Ebelke concludes that the injured worker grossly exaggerated his complaints. Dr. Ebelke relied on objective sources such as office examination procedures, x-rays and MRI images that revealed no significant injury to the lumbar spine. Dr. Ebelke points out as well, the fluid nature of Mr. Johnny's symptoms. In his role as the injured worker, Mr. Johnny reports across time to several different medical doctors, for example, no loss of consciousness, but other times he endorses a loss of consciousness (See Dr. Ebelke's IME report).

In addition, the affidavit from Andrew S. Pavlovich, M.D., Board Certified, Ears, Nose and Throat Specialist calls into question the credibility of Mr. Johnny's hearing problems. Dr. Pavlovich concluded that the results were suggestive of invalid or exaggerated findings on the hearing test causing further damage to Mr. Johnny's credibility.

Dr. Paul E. Deutsch appears to accept as fact the subjective complaints of Mr. Johnny and gives little attention to the contrast between the under reporting by the test taker on the MMPI-2-RF (i.e., presenting himself in an extremely positive light by denying many minor faults and shortcomings that most people acknowledge) and the seemingly over-reported subjective complaints, pain ratings, etc. during the interview. Obviously, and in fairness to Dr. Deutsch, he did not have the report from Dr. David K. Ebelke's IME report dated March 29, 2011 (Dr. Deutsch's report is dated March 1, 2011). Dr. Ebelke

**Records Review Report
Oscar L. Johnny, Jr.**

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had a far different impression of the x-rays and MRI images that revealed no significant injury to the lumbar spine, compared to the reports of other medical providers.

In conclusion, and after reviewing the raw data from Dr. Deutsch's evaluation, his report, as well as the other above listed documents, I believe that Oscar L. Johnny, Jr. engaged in non-credible reporting and as a result his subjective symptoms can not be corroborated.

All opinions were provided within a reasonable degree of psychological certainty.

Submitted by:


Patrick D. Caffrey, Ph.D.



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CURRICULUM VITAE

Summary: Nearly 30 years experience as a rehabilitation psychologist and neuropsychologist, delivering direct patient services, evaluation and treatment in health care facilities and in private practice with additional extensive experience as a vocational specialist, regional manager in private sector rehabilitation, in a university based technical assistance project to Missouri educators modifying curriculum for disabled students, site supervisor of psychological services, researcher/investigator, visiting university lecturer and hospital teaching.

Professional Experience

8-92 to Present: Private Practice. Caffrey Comprehensive Services, Kansas City, MO: Current staff appointment at North Kansas City Hospital. Previous staff appointments at St. Luke's Hospital, Mid America Brain and Stroke Institute, St. Mary's Hospital of Blue Springs, Baptist Medical Center, Research Medical Center: Neuropsychological, psychological and vocational evaluations, adjustment to disability psychotherapy, memory skills training, family and group psychotherapy and in-service training. Serving traumatic brain injury, stroke, spinal cord injury, multiple sclerosis, and dementia patients, blind and low vision and other chronic diseases. General services for depression, anxiety, marriage and family and career counseling in the context of life-altering disability.

2-09 to 3-10: Researcher for Inclusion Research Institute; Inclusive Preparedness Center 1010 Wisconsin Avenue NW, Suite 340, Washington, DC. A study of emergency preparedness for persons who are oxygen dependent or who use oxygen, entitled *Emergency Preparedness and Oxygen Use in the Greater Kansas City UASI Area*. This was a study funded through the Department of Homeland Security under the Urban Area Security Initiative (UASI) Program. This project was a cooperative effort of the emergency managers in the nine county Mid American Regional Council (MARC) region (Cass, Clay, Jackson, Platte, and Ray counties in Missouri and Johnson, Leavenworth, Miami, and Wyandotte counties in Kansas). The study was conducted by a team of researchers at the Inclusive Preparedness Center at Inclusion Research Institute (IRI/IPC) along with local emergency managers and MARC staff.

1-08 to 3-08: Investigator, AL-208 Study, Cardiovascular Surgical Research Clinical Trials; **2-00 to 2-01:** Investigator, Midwest Center for Clinical Studies. Dementia of Alzheimer's Type Pharmaceutical Research Clinical Trials.

EXHIBIT

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3-00 to 2-02, 9-86 to 9-89 & 11-78 to 8-80: Rehabilitation Institute, Kansas City, MO: Inpatient, outpatient, day hospital settings, neuropsychological, psychological and vocational testing. MS Achievement Center psychologist, individual, group and family counseling. Applied behavioral analysis, psychological services department head.

9-89 to 8-92: Rebound, Inc., Kansas City, MO: Brain injury rehabilitation in a transitional living, day treatment and outpatient milieu. Neuropsychological testing, individual, group and family counseling. Applied behavioral analysis.

1-83 to 9-86: Director of Psychological Services, Regional Manager and Vocational Rehabilitation Coordinator. Professional Rehabilitation Management, Inc., Olathe, KS: Supervisor of psychological services staff members, vocational and psychological testing, job analysis, labor market surveys, job placement and in-service trainer.

1-83 to 9-86: Vocational Specialist. Forensic Services Corporation, Olathe, KS: Vocational evaluations and vocational expert witness services.

8-80 to 1-83 & 8-84 to 5-85: Research Assistant. University of Missouri-Columbia: Project Missouri LINC. University based technical assistance project to Missouri educators modifying curriculum for disabled students.

5-75 to 8-77: Mental Health Technician. Northeastern Jackson County Mental Health Center. Independence, MO: Psychiatric inpatient nursing assistance and documentation of patient behaviors serving adults and adolescents.

Education

1985: Ph.D. Vocational Education for the Handicapped. University of Missouri-Columbia. GPA: 3.86

1978: M.S. Psychology. Central Missouri State University-Warrensburg. GPA: 3.63

1977: B.S. Psychology and Rehabilitation. Central Missouri State University-Warrensburg

Internship

1978: West Central Missouri Mental Health Center, Warrensburg, MO. Six month internship for graduate degree requirement in psychology.

Post Doctorate Training

1986 to 1987 Veterans Administration Hospital: Halstead Reitan Neuropsychological Assessment Procedures and Interpretation. Supervisor: David Butler, Ph.D.

1988 University of Kansas-Lawrence: Biological Foundations of Psychopathology

Licensure/Certifications

1989 to present: Missouri Licensed Psychologist: PY 01379

1998 to present: National Board of Cognitive Behavioral Therapists: Certified Cognitive Behavioral Therapist and Certified Forensic Counselor Endorsement.

Professional Organizations & Community

2009 *Turkey Walk* Volunteer: Delivering Thanksgiving Groceries and Prepared Meals to individuals/families with Multiple Sclerosis, Multiple Sclerosis Society, Mid America Chapter.

2008-2009 Freeman Farm's South Homeowner's Association Board Member and Editor of Newsletter.

2007 to Present National Academy of Neuropsychology (NAN), Membership at Professional Level

2007 to Present Volunteer, Holy Angels Catholic Church, Executive Board Member and Ambassador Committee Member for Building Fund Committee

2005 to Present Multiple Sclerosis Society, Mid America Chapter, Clinical Advisory Committee Board Member

2002 to present: American Psychological Association

2002 to present American Psychological Association; Division 40, Neuropsychology

1994 to present: Missouri Psychological Association

1990 to present: Missouri Rehabilitation Association, Western Missouri Valley Chapter

1983 to present: National Rehabilitation Association

1988 to 1990: National Rehabilitation Information Center (NARIC), Washington, D.C., Advisory Board Member.

1989 to 2001: University of Kansas Medical Center visiting lecturer, School of Allied Health, Physical Therapy Education.

1982 to 1983: Governor's Committee on Employment of the Handicapped, Chairperson, Columbia, MO

2000 to 2001: Speaker's Bureau Arthritis Foundation

1998 to 2001: Church of the Nativity: Chairperson of Data Gathering Committee and Christmas in October volunteer.

Bibliography

Publications:

1985: Caffrey, P. The effects of acknowledgement of disability in a simulated employment interview. Dissertation Abstracts.

2003 April/June: Caffrey, P. Cognitive Impairment in MS: Fact or Myth. Lead Article, MS Connection. National Multiple Sclerosis Society, Mid America Chapter

Presentations:

Caffrey, P. (January 2001) Depression and the Rehabilitation Patient: What the Rehabilitation Nurse Should Know. Association of Rehabilitation Nurses.

Caffrey, P. (May 2001) Coping with Chronic Illness. National Kidney Foundation: Regional Conference.

Caffrey, P. (August 2001) Coping with Chronic Illness: Multiple Sclerosis Society.

Caffrey, P. (October 2001) Understanding Concussion: Helping Hand of Goodwill Industries

Caffrey, P. & Lemons, J. (November 2001) Building and Maintaining Healthy Relationships: Conquering Challenges: Regional Conference, Arthritis Foundation.

Caffrey, P. (November 2001) Depression and Diabetes. St. Mary's Hospital Diabetes Support Group.

Caffrey, P. (March 2002) Rehabilitation Psychology. St. Luke's Hospital

Caffrey, P. (October 2002) Panel Member: Spina Bifada Conference: Rehabilitation Institute

Caffrey, P. (May 2003) Top 10 Reasons for Caregiver Burnout. Care Giver Conference, American Heart Association.

Caffrey, P. (July 2003; February 2004) Psychosocial Impact of TBI on Patient and Family. St. Luke's Hospital Neuro-Trauma Series.

Caffrey, P. (August 2003) Geriatric Neuropsychology. St. Luke's Hospital Neuro-Trauma Series.

Caffrey, P. (February 2004) Neuropsychological Testing and Brain Tumors. St. Luke's Hospital Brain Tumor Support Group.

Caffrey, P. (March 2004) Neuropsychological Indicators of Early Stage Alzheimer's Disease.

Caffrey, P. (April 2004) Coping with Chronic Illness. Arthritis Foundation.

Caffrey, P. (March 2004) Life After Trauma: Understanding the Biological Foundations of Posttraumatic Stress Disorder (PTSD): A Guide for Treatment. 18th Annual Midwest Trauma Conference.

Caffrey, P. (June 2004) Coping with Chronic Illness. Send In the Clowns. St. Luke's Northland-Smithville Campus Stroke Support Group

Caffrey, P. (August 2004) Understanding the Emotional and Psychological Needs of the Visually Impaired and Blind. University of Missouri.

Caffrey, P. (April 2005) Top 10 Reasons for Caregiver Burnout. Care Giver Conference, Alzheimer's Association

Caffrey, P. (September 2005) Depression in Stroke Patients: Impact of Depression on Stroke Recovery, Eighth Annual Stoke Symposium.

Caffrey, P. (May 2005) Understanding the Emotional and Psychological Needs of the Visually Impaired and Blind. University of Missouri.

Caffrey, P. (October 2006) Cognitive Impairment in Multiple Sclerosis: Fact or Myth. National Multiple Sclerosis Society, Mid America Chapter, Symptom Management Conference.

Caffrey, P. (November 2008) Recognizing Cognitive Changes: A care partner's guide National Multiple Sclerosis Society, Mid America Chapter's Conference, Moving Forward Together.

Caffrey, P. (December 2009) Social Domain of Stroke: Relationship and Role Changes. Lee's Summit Medical Center Consortium Educational Offering: Stroke Domains: A Complex Disease.

Caffrey, P. (July 2010) Multiple Sclerosis: Mood and Cognition: Multiple Sclerosis in the 21st Century Conference. National Multiple Sclerosis Society, Mid America Chapter.

Caffrey, P. (August 2010) Symptom Validity Testing: Assessment of Response Bias and Suboptimal Performance. Case Management Society; Kansas City Chapter.//



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CASE LIST SUMMARY Past 4-years

<u>Name/Case</u>	<u>P/D</u>	<u>Date</u>	<u>Attorney</u>
Robert Kant vs. MADA	D	2010	Christina Schoeppey
Amy Frickey v. Josten's Inc. and St. Paul Traveler's Insurance Company	D	2010	John Carpinelli
Robert O. Townsend v. Yamaha Motor Corp. & Moellers Inc.	D	2009	John Schultz
Robert Shane Gantt v. Knudson Construction and Depositors Ins	D	2009	John Carpinelli
Kristina Michelle Hall v Kansas State Self-Ins Fund	D	2009	?
Benjamin S. Byrd v Midwest Materials, and Cambridge Integrated Services	D	2009	Kevin Kruse
David Lee Taube v North Missouri Construction, Inc	D/P	2009	William Spooner
Jason Dodson, Employee v Von Hoffman Press, Employer/RR Donnelly D		2009	Thomas J. Pettit
Patricia Johnson v Venture	D	2009	D. Steven Marsh
Lorenzo A. Corleone v Alstom Power/KCP&L	D	2009	Bart Eisfelder
Jaquelyn N. Elkins and Tyson M. Lininger v. Robert D. Scott and Hunter Distributing Inc	D	2009	Robert Luder
Beth L. Ricketts v Country Harvest IGA	D	2008	Matthew Crowley
Chien, Jemmy v ?	P	2008	Kevin Stanley

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Freda M. Morgan v ?	P	2008	Steven K. Nordyke
James Hoerschgen v Von Hoffman Press, Employer	D	2008	James Randall
Rudy E. Davis, Sr v KC Southern Railway Company	D	2007	William P. Coates, Jr.
Kevin A. McGillivray v. Ron Atteberry Tower Services, Inc.	D	2007	Christopher J. McCurdy
Pashman v Hy Vee Food & Drug Stores	P	2007	Mike White
Ron Clark v ?	D/P	2006	Kevin Kruse
Sharple, Keith E. v Superior Auto Mall	D/P	2006	?
Sharon Lynn Pride v Four Way Café and Western Agricultural Ins Co	D	2006	Leigh Hudson
Sue Ellen Garrison v Casey General Stores	D	2006	?

D = Defense

P = Plaintiff

D/P = Both or undetermined

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FEE SCHEDULE

Expertise Time	\$150 per hour
Travel/Wait	\$150 per hour
Deposition and/or Testimony	\$300 per hour
Mileage @ 0.48 per	

Travel reimbursement:
All actual and reasonable expenses with receipts.

Cancellation Policy: Minimum 24 hours advanced notice (no charge)
If "no show" or not cancelled at least 24-hours prior to appointment time:

\$900 (evaluations)
\$150 (treatment)